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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RECYCLING AND GENERAL INDUSTRIAL  
UNION LOCAL 108 WELFARE FUND, by its  
Trustees Michael Hellstrom, Joseph Bianco,  
Kevin Walton, and Joseph LoVerde, and

RECYCLING AND GENERAL INDUSTRIAL  
UNION LOCAL 108 PENSION FUND, by its  
Trustees Michael Hellstrom, Joseph Bianco,  
Kevin Walton, and Joseph LoVerde, and

Civil Action No.  
08-CV-02226

**ANSWER AND  
RULE 7.1  
CERTIFICATION**

RECYCLING AND GENERAL INDUSTRIAL  
UNION LOCAL 108 ANNUITY FUND, by its  
Trustees Michael Hellstrom and  
Joseph LoVerde,,

Plaintiffs,

-against-

TARRYTOWN R&T CORP.,

Defendant.  
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Tarrytown R&T Corp. ("defendant"), by its attorneys Goldberg and Weinberger  
LLP, answer the complaint as follows:

1. Denies sufficient knowledge or information necessary to form a belief as  
to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 8, 10, 12, 13, 14, 15,  
22, 23, 25, 26, 30, 31 of the complaint.

2. Denies the allegations contained in paragraphs 11, 16, 17, 18, 19, 20, 21, 24, 27, 28, 32, 34, 35, 37 and 38 of the complaint.

3. Admits that defendant is a corporation incorporated under the laws of the State of New York but denies the remaining allegations contained in paragraph 6 of the complaint.

4. Admits that defendant became party to a collective bargaining agreement with Local 108 upon its assumption of the operations of the transfer station located at 1011-1017 Lower South Street, Peekskill, New York, but denies the remaining allegations contained in paragraph 7 of the complaint.

5. Admits that the collective bargaining agreement provides that defendant is required to make certain periodic contributions to the Funds, but denies the remaining allegations contained in paragraph 9 of the complaint.

6. Responds to the allegations contained in paragraphs 29, 33 and 36 of the complaint by reiterating its answer to the various paragraphs of the complaint alleged therein as if same were set forth at length.

#### **FIRST AFFIRMATIVE DEFENSE**

The plaintiffs have failed to state a claim against the defendant upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The plaintiffs seek causes of action and/or relief which are not provided for and/or which they are not entitled to receive, including under the Employee Retirement Income Security Act, 29 U.S.C. section 1001, et. seq., and the Labor Management Relations Act, 29 U.S.C. Section 141, et. seq.

**THIRD AFFIRMATIVE DEFENSE**

There is no collective bargaining agreement or a collective bargaining agreement which allows for the causes of action and/or the relief sought by the plaintiffs.

**FOURTH AFFIRMATIVE DEFENSE**

The defendant has paid to plaintiffs all amounts that are required by applicable law or contract.

**FIFTH AFFIRMATIVE DEFENSE**

The plaintiffs have failed to exhaust their administrative remedies, including arbitration.

**SIXTH AFFIRMATIVE DEFENSE**

The Court lacks subject matter jurisdiction.

**SEVENTH AFFIRMATIVE DEFENSE**

The Plaintiffs claims are barred by the doctrines of estoppel and waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

The causes of action are barred by the statute of limitations.

**NINTH AFFIRMATIVE DEFENSE**

The causes of action are barred by applicable law, including the Labor Management Relations Act, 29 U.S.C. Section 141, et. seq.

**TENTH AFFIRMATIVE DEFENSE**

The causes of action are preempted by applicable law, including the Labor Management Relations Act, 29 U.S.C. Section 141, et. seq.

WHEREFORE, Defendant respectfully request that the Court dismiss the Complaint, with costs and attorney's fees, as well as such other and further relief as this Court may deem appropriate.

Dated: Redding, Connecticut  
April 9, 2008

GOLDBERG AND WEINBERGER LLP  
Attorneys for Defendant  
56 Dayton Road  
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(203) 938-2105

By: /s/ Lewis Goldberg  
Lewis Goldberg (LG-0344)

**RULE 7.1 CERTIFICATION**

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for Tarrytown R&T Corp. (a private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said parties, which are publicly held:

**None**

Dated: Redding, Connecticut  
April 9, 2008

/s/ Lewis Goldberg  
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